

Per Curiam.

LEE, COMMISSIONER OF CORRECTIONS OF  
ALABAMA, ET AL. v. WASHINGTON ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR  
THE MIDDLE DISTRICT OF ALABAMA.

No. 75. Argued November 7, 1967.—Decided March 11, 1968.

A three-judge District Court declared Alabama statutes requiring racial segregation in prisons unconstitutional and established a schedule for desegregation. The State's challenges of the judgment based on Fed. Rule Civ. Proc. 23 (relating to class actions), the claimed constitutionality of the statutes, and the failure to allow for necessary prison security and discipline, *held* to be without merit.

263 F. Supp. 327, affirmed.

*Nicholas S. Hare*, Special Assistant Attorney General of Alabama, argued the cause for appellants. With him on the briefs were *MacDonald Gallion*, Attorney General, *Gordon Madison*, Assistant Attorney General, and *J. M. Breckenridge*.

*Charles Morgan, Jr.*, argued the cause for appellees. With him on the brief were *Orzell Billingsley, Jr.*, and *Melvin L. Wulf*.

PER CURIAM.

This appeal challenges a decree of a three-judge District Court declaring that certain Alabama statutes violate the Fourteenth Amendment to the extent that they require segregation of the races in prisons and jails, and establishing a schedule for desegregation of these institutions. The State's contentions that Rule 23 of the Federal Rules of Civil Procedure, which relates to class actions, was violated in this case and that the challenged statutes are not unconstitutional are without merit. The remaining contention of the State is that the specific orders directing desegregation of prisons and

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jails make no allowance for the necessities of prison security and discipline, but we do not so read the "Order, Judgment and Decree" of the District Court, which when read as a whole we find unexceptionable.

The judgment is affirmed.

MR. JUSTICE BLACK, MR. JUSTICE HARLAN, and MR. JUSTICE STEWART, concurring.

In joining the opinion of the Court, we wish to make explicit something that is left to be gathered only by implication from the Court's opinion. This is that prison authorities have the right, acting in good faith and in particularized circumstances, to take into account racial tensions in maintaining security, discipline, and good order in prisons and jails. We are unwilling to assume that state or local prison authorities might mistakenly regard such an explicit pronouncement as evincing any dilution of this Court's firm commitment to the Fourteenth Amendment's prohibition of racial discrimination.